

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acq. Appeal No. 603 of 2017

Appellant : Syed Najaf Abbas Zaidi
through Mr. Abad-ul-Hasnain, Advocate

Respondents-1 to 3: through Syed Hassan Jaffery, Advocate

Respondent No.4 : The State
through Mr. Talib Ali Memon, A.P.G.

Date of hearing : 29th November, 2022

JUDGMENT

Omar Sial. J.: F.I.R. No. 114 of 2012 was registered on 10.05.2012 under sections 406, 420, 464, 468, 471, 472 and 170 P.P.C. at the PIB Colony police station. It was registered on the complaint of Syed Najaf Abbas Zaidi (hereinafter referred to as “**Zaidi**”) who recorded that his sister received a *khula* notice from Ikram Hussain Tirmizi, Rajab Ali and Ghulam Muhammad Sarbaz, who were office bearers of the Darul Ifta Sharia Board on 26.12.2010 asking her to appear before them. Zaidi filed a petition in this court praying that the members of the Board be restrained from posing as a family court through which they were minting money from innocent people. This court passed certain orders in the petition which was filed restraining the Board members to act as a family court. The Board members did not comply with the order of the court and continued its activities. Finally an order was passed by the court on 15.04.2011 pursuant to which Zaidi came to the police station and lodged the aforementioned F.I.R.

2. The accused pleaded not guilty and claimed trial. At the end of the trial, the learned 4th Additional Sessions Judge, Karachi East found the accused not guilty of the offences with which they were charged and

acquitted them. Zaidi has now challenged the judgment of the learned trial court.

3. Learned counsel has very extensively, and at times emotionally, argued that the respondents, and the Trust, they are trustees of, are illegally and unlawfully running a parallel court system and hence their acquittal was not warranted. In support of his argument he has relied on certain orders of this court passed in a petition Zaidi had filed earlier. He also heavily relied on certain notices purportedly issued by the respondents, which notices are on record, to support his argument that a parallel legal system is running. Learned counsel for the respondents as well as the learned APG have supported the impugned judgment.

4. Learned counsel for the appellant was asked to point out the infirmity or illegality in the impugned judgment. The stance he took was that evidence was not appreciated in its true perspective as the learned trial court failed to take into account the orders passed by this court in the petition filed by Zaidi as well as the notices which were issued by the Board.

5. The record reflects that Zaidi on 31.01.2011 filed a public interest constitutional petition bearing number D-335 of 2011 in this Court against Imamia Darul Ifta Wa Shariat Board, Ikram Hussain Tirmizi, Ghulam Mohammad Sarbaz and Rajab Ali Chandio and others. There were as many as 15 prayers made. Suffice to say that Zaidi was seeking a declaration that a parallel family court system should not be allowed to operate. A learned Division Bench of this Court on 03.06.2011 restrained all the persons from operating a parallel family court. On 15.11.2011 the learned Division Bench passed an order the last sentence of which was as follows: *“While the petitioner counsel may initiate the proceedings of contempt against them, at the same time the affected party is also allowed to lodge a complaint regarding such illegal activities, with the police who will take proper legal steps and proceed in accordance with law.”* It was this order, which Zaidi used as a basis to lodge an F.I.R. 6 months after the passing of the order. No reason for the delay was given by his counsel during these proceedings.

6. Learned counsel quite categorically admitted that none of the persons to whom the notices exhibited at trial ever complained about the letters sent to them nor did any of the recipient of the letter offer to be witness in the case nor were section 161 Cr.P.C. statements of any such person recorded. Let alone any other person, Zaidi's own sister, who ostensibly had received a letter from the Board, did not appear as a witness. He also acknowledged that the letterheads do not bear the name or emblem of any court nor were any such letterheads or stamps ever found, let alone produced at trial as evidence. The letters in question, which were exhibited at trial by Zaidi in themselves show that all of them were issued on a date prior to 03.06.2011 i.e. when the learned Division Bench of this Court had restrained the respondents from "*acting, taking and passing order in a manner like that of a Family Court*". My attention has been drawn to no letter issued by the respondents after the date of the said order. Learned counsel acknowledged that the letters issued by the Board were not put to the accused in their section 342 Cr.P.C. statements nor were they confronted with any order of the learned Division Bench. No evidence of any misappropriation was produced at trial, except the testimony of witness Nazar Abbas Jafri, which I have commented on later in this opinion. No forged document was produced at trial nor were the accused confronted with any. No fake court seal was recovered, produced or put up to the accused.

7. **PW-2 Nazar Abbas Jafri** in his testimony appeared to mislead the learned trial court by narrating events of an earlier case of his pretending to be as if he was recording it in the present crime. In his cross examination he admitted that "*it is correct that I have recorded my statement relating to the case of year 2008. It is correct that I have not recorded my statement relating to this F.I.R. of instant case. It is correct that I have lodged F.I.R. No. 119 of 2008 against the present accused persons at P.S. PIB Colony, which was disposed of in C Class. It is correct that I also filed C.P. No. 1911 of 2008 and 1865 of 2008 before the Hon'ble High Court of Sindh, which were also dismissed.*" He then went to state "*It is correct that I have no knowledge*

about the case of the complainant Najaf Abbas....” Interestingly, this is the only witness who the learned counsel for the appellant has relied upon to show that the respondents had misappropriated Rs. 2000 and thus are guilty of an offence under section 406 P.P.C. This witness himself admitted that the amount related to a 2008 transaction but that he had not even mentioned it in F.I.R. No. 119 of 2008 that he had lodged. The investigating officer of the case i.e. Nusrat Hussain acknowledged that Nazar Abbas had not even recorded a section 161 Cr.P.C. statement recording what he had stated at trial.

8. **PW-3 Asif Javed Arain** testified to the extent that he registered the F.I.R. on the complaint of Zaidi. In any case this was not denied.

9. **PW-4 Nusrat Hussain** was the investigating officer of the case. He testified that *“It is correct that I have not produced any documentary evidence showing that the accused persons were running trust as a family court.”* *“It is correct that I did not record the statement of any independent person of the vicinity about commission of this offence.”*

10. Learned counsel has also failed to demonstrate as to how the ingredients of the particular sections of the Penal Code with which the respondents were charged were even satisfied in view of the evidence led at trial. Whether the letters written by the Board, prior to the order of the learned Division Bench can be interpreted as orders issued by a court is debatable. In any case, the restraining order of the Division Bench is in field.

11. Learned counsel has failed to point out any mis-reading, non-reading, illegality, infirmity, capriciousness or perversity in the impugned judgment. To the contrary, it appears that the case emanates from a personal vendetta between the parties. Double presumption of innocence also works in favour of the respondents. The appeal is dismissed.

JUDGE